EXHIBIT 24

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In Re:	**Case No. 19-34054-sgj-11**
	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	Dallas, Texas
	Wednesday, April 28, 2021
	1:30 p.m. Docket
Debtor.	
UBS SECURITIES, LLC, et. al.,	**Adversary Proceeding 21-3020-sgj**
Plaintiffs,	- MOTION FOR PROTECTIVE ORDER [23]
v.	- MOTION TO MODIFY ORDER GRANTING LEAVE TO FILE UNDER SEAL [24]
HIGHLAND CAPITAL MANAGEMENT, LP,	- MOTION FOR ORDER AUTHORIZING ALTERNATIVE SERVICE OF SUBPOENA [28]
Defendant.	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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DALLAS, TEXAS - APRIL 28, 2021 - 1:34 P.M.

THE COURT: We have a setting in Highland. Actually, UBS versus Highland, Adversary 21-3020. Let's get appearances first. I'll start with the Plaintiff, UBS. Do we have Mr. Clubok and your team appearing today?

MR. CLUBOK: Good afternoon, Your Honor. Andrew Clubok from Latham & Watkins on behalf of UBS. And I'm joined with -- I'm joined by Kathryn George, also with Latham & Watkins, will be arguing today's motions.

MS. GEORGE: Good morning, Your Honor.

THE COURT: Okay. I heard Ms. George, and did you say someone else?

MR. CLUBOK: Just Kathryn George.

THE COURT: Oh, Kathryn George? All right. Thank you.

All right. For the Defendant, Highland, do we have an appearance today?

MR. MORRIS: Yes, Your Honor, it's -- good afternoon. It's John Morris from Pachulski Stang Ziehl & Jones. With me is my colleague Gregory Demo. And we're here today on behalf of the Debtor, although I'm not sure that these motions are directed towards us *per se*.

THE COURT: Okay. Thank you.

All right. Now, the Movant on a couple of these motions, Mr. Dondero. Mr. Taylor, are you appearing for Mr. Dondero

today?

MR. TAYLOR: Yes, Your Honor. Clay Taylor, Will Howell, and John Bonds appearing on behalf of Mr. Dondero. And I'll be handling the arguments today.

THE COURT: All right. Thank you. I know we'll likely have some observers out there. I'll ask, does the Committee -- do you want to appear today? I know you've made a notice of appearance in the adversary.

MR. CLEMENTE: Good afternoon, Your Honor. Matt Clemente; Sidley Austin; on behalf of the Committee.

THE COURT: All right. Thank you. I'll just ask: Anyone else have a dying urge to make an appearance? Again, I know we have lots of observers.

MS. LAMBERT: Lisa Lambert with the United States Trustee.

THE COURT: All right. Thank you, Ms. Lambert. Anyone else?

All right. Well, as far as who goes first here, we have two motions of Mr. Dondero, a motion for protective order and a motion to modify the Court's sealing order in this adversary. Those were filed before the UBS request to authorize alternative service methods for a subpoena on Mr. Dondero. So I'll let Mr. Taylor go first, since your motions are first in time. You may proceed.

MR. TAYLOR: Thank you, Your Honor. Just as

housekeeping matters, we had actually had a conference with UBS last night and what we had talked about is actually me going first because we thought that might be how Your Honor ruled, and she did before we even got there.

But what we have also decided, in an attempt to streamline this process and be as efficient as possible, is what we would propose -- we think -- I believe UBS obviously can speak for themselves -- believe these motions are all interrelated. And we think it makes the most sense to argue all three of these together, and then allow UBS time to argue their case and then do rebuttals, as necessary.

We've also agreed that this -- other than the documentary evidence before the Court -- both parties filed a witness and exhibit list out of an abundance of caution, but we would like the Court to admit into evidence each of the parties' exhibits that they have filed with their witness and exhibit list, but there's no need for any live testimony. We believe the Court can decide on the papers, the arguments, and the documentary evidence before it.

So we would move for admission of both our exhibits and theirs as a preliminary matter, Your Honor.

THE COURT: All right. Mr. Clubok, you confirm this is your agreement? (Pause.) You must be on mute.

MR. CLUBOK: Your Honor, yes, that is the agreement, although I was on mute because Ms. George is going to handle

the rest of the hearing.

THE COURT: Oh, okay.

MR. CLUBOK: So I'll let her --

THE COURT: Ms. George, sorry about that. All right. So I got confirmation that is the agreement. So, for the record, all of the exhibits -- let's see, UBS's look like they're at Docket Entry No. 30 and 37, and Mr. Dondero's look like they appear at Docket 34 -- all of those are admitted into evidence.

(UBS Securities, LLC's exhibits at Docket Entries 30 and 37 are received into evidence. James Dondero's exhibits at Docket Entry 34 are received into evidence.)

THE COURT: All right. Mr. Taylor?

MR. TAYLOR: Thank you, Your Honor. May it please the Court. For the record, Clay Taylor appearing on behalf of James Dondero.

As Your Honor is aware, we're here on three different motions. The first is Mr. Dondero's motion for a protective order. The second is a motion for a modification of the order sealing this adversary proceeding. And the third is the Debtor's motion for -- authorizing alternative service.

We believe, at the outset, Your Honor, that you should grant the first two motions, for the protective order and modify the sealing order, and that the motion for alternative service, based upon the arguments and the rulings likely to be

made by this Court on the first two motions, should be denied as moot.

I'll attempt to take these motions up in order. They are, of course, interrelated, but I'll try to address each of them separately.

The first is the motion for protective order. This motion deals with some fundamental due process rights. I hate to repeat the timeline and what is already stated in our papers, but I do believe the timeline is important, so I'm going to go over a couple of dates with Your Honor.

On March 29th, there was a motion to file this complaint under seal. The same day, the Debtor filed essentially what is a "me, too" motion. It is clear, upon review of subsequent events, that the "Plaintiff" and the "Defendant" are acting in concert.

On March 31st, the Court granted the motion to file the action under seal. That was just two days after they had filed the motion. We're not sure, Your Honor, but I believe that was probably done without a hearing or notice because both parties agreed.

The very next day, on April 1st, the complaint was filed.

Meantime, in the meantime and in the background, UBS, on March 30th, sent to Mr. Dondero via me a litigation hold letter. The Debtor, the very next day, sent a very similar letter, a litigation hold letter, to Mr. Dondero through me.

It appears, although we are not sure because we have not seen it, that these litigation hold letters may relate to this suit.

On April 1st, the very -- the very same day that this suit was filed, subpoenas were issued to my client. And they were sent to me and they asked me to accept service. They asked me to accept service for these subpoenas on a suit that I've never seen. They asked for documents from my client to be produced eight days later. And they asked for him to sit on April 16th for his deposition on a suit on which he still to this day has not seen.

I'm going to obviously go ahead and argue the motion, Your Honor, but to be frank, just the recitation of those above facts, to me, at least, make this abundantly clear how unreasonable the subpoenas both were back in the past and still are today.

What are the rules regarding discovery? Well, generally speaking, Your Honor, in an adversary proceeding, discovery can't be issued before a Rule 26(f) conference is held. Of course, when we filed this motion, we were completely unaware of whether a Rule 26(f) conference had been held, because, of course, we weren't a party. But you can bring a motion to bring discovery and issue discovery early, prior to the Rule 26(f) conference being held, but a motion must be filed with the Court to authorize such issuance.

Here, upon my examination of the docket, I am unaware of any such motion having been filed. Again, we're not a party to this suit, I don't get all the ECF notices, but I am unaware of any such motion having been filed, nor granted.

Even if such a motion is filed, the earliest that any party could issue and serve discovery is 21 days after the suit had been initiated and service perfected. Of course, 21 days is -- is a pretty special date, and there's a reason why they picked 21 days. Well, that's when responsive pleadings are due. You can't have parties have to respond to discovery before the parties have even appeared in the case.

THE COURT: I know you're going to get to this, but Mr. Dondero is not a party.

MR. TAYLOR: That is one hundred percent correct, Your Honor. He's not a party. However, the rules for discovery as to nonparties is exactly the same. And there is no -- there is no provision for short-circuiting discovery rules in an adversary proceeding as to a nonparty.

Now, I think what the other side will argue is, well, this is a contested matter under Rule 9014, and therefore we can issue discovery. And quite frankly, Your Honor -- and they'll cite to another adversary proceeding filed underneath this lead bankruptcy case where a motion for protective order was indeed filed by Mr. Dondero. It was regarding the injunction proceeding. It was filed on December 28th. The Debtor in

that case filed a response that same day. And the next day, I believe without notice and a hearing, the Court denied that motion for protective order in part, granted it in part. There was no rationale given in the order, which was largely constructed, I believe, from an email that this Court had directed to the parties. But that is not a finding that 9014 should -- and therefore not applying Rule 26(f) is binding authority on this Court or any other.

And Your Honor, to the extent that they make that argument, we can find no case law in support. In fact, we find it to the contrary, that when an adversary proceeding is initiated, the due process rights that are implicated are important and should not be abrogated. A contested matter is a -- much looser rules of construction in how discovery can be -- I'm sorry, did you say something, Your Honor?

THE COURT: Well, I was about to. I apologize for interrupting, but I think --

MR. TAYLOR: No, go ahead.

THE COURT: I think all the lawyers hopefully know I tend to err on the side of being pragmatic. And here is what I'm about to ask you in that spirit. It feels like we're going through a lot of brain damage to kind of argue about whether an early 34 request applies to a nonparty and whether Rule 34 applies in a contested matter, is this a contested matter, or should it be considered an adversary? You know, we

could argue for a long time about that, and you all have, in the pleadings, argued quite a bit.

But I'm looking at the docket, and the summons and complaint it shows were served on the party, Highland, let's see, this was filed April 5th, and it shows service occurred on April 1st. So, assuming Rule -- the early Rule 34 provision of Rule 26 applies here, we're now at more than 21 days after summons. Now, I know you say -- okay. If this rules applies like you say, April 22nd, I guess, would have been the very first day that the subpoenas could have been served on Mr. Dondero.

MR. TAYLOR: Correct. Had a Rule --

THE COURT: We're at April 28th now. I mean, why are we arguing about this, is what I'm asking, from a pragmatic standpoint.

MR. TAYLOR: Well, Your Honor brings up an interesting point. First of all, let me state that to the extent early discovery had been requested, then, yes, it would be April 22nd. But no such motion was brought, first of all.

Second of all, and this is -- this is what to me is a little bit mind-boggling, Your Honor. It is -- we think it appears to be clear that the ultimate target of this litigation is other than the Defendant. The Defendant and the Plaintiff have a motion before this Court in the main bankruptcy case to settle all the claims amongst themselves.

And so the Defendant is not truly a target defendant here. What is being done is a true assault on fundamental due process rights of third parties. There's not a plaintiff-versus-defendant that are adversarial to each other. Instead, they are acting in concert to try to get some sort of material from my client to prove their ultimate case against him. And what -- are they going to try to implead him in this case, if we don't intervene as a matter of right? I don't know. Are they going to try to use some sort of finding made in this Court, in this friendly litigation, to then go use that finding in a subsequent proceeding? Again, I don't know. But the fact that we are apparently some sort of a target of this litigation, and being asked to sit for depositions and produce documents for it, but they won't show us the complaint, to me is just -- it truly blows my mind that --

THE COURT: So, what we're really, really focusing on today is the sealing motion, right? I mean, I guess that's what I felt like coming in. This is all getting to whether this thing should be unsealed. Because we're more than 21 days --

MR. TAYLOR: Correct.

THE COURT: -- out. You know, it seems like --

MR. TAYLOR: I totally agree that --

THE COURT: -- your motion is kind of now not moot, but, you know, it has less of a punch to it now that we're

farther out.

And the alternative service motion of UBS seems like it's going to be a no-brainer if they really convince me that Mr. Dondero -- you know, service was attempted on him 31 times and he somehow was always unavailable. What we're really going to fight about today is the sealing aspect of this adversary; --

MR. TAYLOR: Well, --

THE COURT: -- yes or no?

MR. TAYLOR: I one hundred percent agree, but the sealing then flows to the motion for protective order. To ask my client to produce documents when he hasn't seen the very complaint about which he seems to be the target, and whether he then gets a chance or should be -- move to intervene as a matter of right or as a matter of discretion, before he has a chance to review that, make an informed decision about that, in my mind, and we believe the case law supports, that a third party's rights should not be prejudiced and he shouldn't have to produce discovery that could potentially be used against him, sit for depositions that could potentially be used against him. The timing is just still off until we see what we're talking about and have a true, legitimate chance, which, generally speaking, would be 21 days after it is served, and in my mind that equates to after it is unsealed. At that point, maybe then discovery is appropriate. But it's just not at this point.

They've attempted to use a secret court filing. That is just anathema to everything that our public system of justice stands for, is to have secret proceedings. Proceedings are supposed to be true and open. If there's highly secret and confidential information, generally, they are filed and -- under seal and redacted, just those sensitive confidential information.

And apparently whatever is sensitive and confidential has something to do with my client and transactions that he may have done and they say that were wrongful. Well, if he already has knowledge about them, what's the sensitive confidential information that we're discussing? Again, I don't know because I haven't seen the complaint.

So, I agree with Your Honor. The motion to seal does kind of -- it's the driver here. But then that feeds into the relief that we think that this Court should afford itself, should afford us, after the unsealing.

As far as the alternative service, I was not authorized to accept service. And why would I, for a suit that we don't know anything about? And, you know, they tried to serve him. Yeah, he was unavailable. But they shouldn't have been trying to serve him anyway with this discovery about this secret star chamber-like suit.

And so I hate to be so forthright about it, but it just truly shocks the conscience a little bit, that that is what is

trying to be done here.

THE COURT: You know, I will say I tend to agree with most of what you're saying. I am a judge who likes transparency. I don't like to seal things. But let me play devil's advocate. You all have a pretty good clue what the lawsuit is about. I mean, you can tell from the publicly-available docket that it's seeking injunctive relief. And if I understood --

MR. TAYLOR: We don't know against whom, though, Your Honor.

THE COURT: And if I understood what I read correctly, preservation notices were sent that looked pretty detailed as far as what was going on here.

So, you know, I think this kind of cuts both ways. It cuts into your argument. It's probably going to cut into Mr. -- or I keep wanting to say Mr. Clubok. I'm sorry.

MR. CLUBOK: Ms. George, Your Honor.

THE COURT: Ms. George. It probably cuts into her argument, too.

I mean, it feels like the cat's out of the bag here. I cannot believe that you and your client really have no clue what this is about. And given that, I'm really not sure why we need to seal it. But just if you can respond to that. Is it a little disingenuous to say you have no idea what this lawsuit is about? Your client has no idea?

MR. TAYLOR: So, again, timing is important here, Your Honor. When we were served with the subpoenas, that was April 1st. The motion to settle with UBS, which made these allegations that $300 million had been denuded from the estate and sent somewhere else, that hadn't been filed. We really have no idea. There's some sort of injunctive relief that has been sought and may be granted in this case. I'm not really sure.

THE COURT: It's -- the order is --

MR. TAYLOR: I don't know who the injunction is against.

THE COURT: The order is right there on the docket, right? Isn't the order -- the order is not under seal, is it?

MR. TAYLOR: Your Honor, the TRO is not, Your Honor.

THE COURT: Uh-huh.

MR. TAYLOR: The injunction that they're asking for, I mean, I'm not sure why they have to enjoin a friendly defendant. They can't enjoin anybody else who's not a party. So, again, I'm not exactly sure why the injunctive relief was necessary or sought. And I think it was probably just to get expedited discovery going to then try to issue it to my client.

But, so we have some idea what it's about. But, again, what does this Court look for, and when we go to trial, what's the active pleading? Well, it's the Plaintiffs' complaint

right up until the joint pretrial order, which lays everything back out. I mean, that's the guts of what lawyers have to rely upon, so we've got to be able to see it.

Sure, do I have a decent idea now, after the UBS settlement motion has been filed and the litigation hold letters came up? Were we able to kind of piece it together? Sure. But should we have to try to piece together what's in a lawsuit that alleges, apparently, $300 million worth of damages or somewhere thereabouts? We shouldn't have to be guessing.

These are serious allegations. They should be taken seriously. We should be able to see what that -- that lawsuit is about if we're going to be asked to produce discovery about it.

So, yes, I get your -- but at the same time, when these subpoenas were first issued and we started kind of drafting up -- as we started piecing stuff together, we filed our motion for protective order the day after the UBS settlement motion was filed. And so we had already kind of prepared that, and we were still trying to evaluate that UBS settlement motion, exactly what they were saying.

So, but again, why should -- why are we searching around in the dark for something? It's not something we should have to do. That's why there are due process requirements.

Did that answer Your Honor's question?

THE COURT: Well, it does. And what about this? I seem to recall, in UBS's pleading, response to this, they said they did offer to show your client the lawsuit, but they wanted your client to agree not to share it beyond, you know, himself and you, and his lawyers. And that was a no go. Tell me about that.

MR. TAYLOR: Sure. First of all, I was surprised to see those communications come about. Those clearly were settlement communications. But be what it may, I'm happy to address them.

I think if Your Honor turns back in the prior emails, when we first made the suggestion that we were thinking about opposing and moving for a protective order, I said, but let me see the suit. And Mr. Pomerantz or Mr. -- and Mr. Morris's firm said, no, but really what you -- who you need to ask is the Plaintiff, UBS. And so I went to Mr. Clubok, I said, can we see them? And the answer was no.

It was only after we filed the motion for protective order that they came back and said, you know what, we'll let you see them, but you can only share it with Mr. Dondero and his counsel, which, okay, that -- that's a step in the right direction. But I don't know what this lawsuit says, but I -- we have a decent idea. My guess is it implicates rights of third parties. It also might implicate rights of affiliate entities. Mr. Dondero may or may not -- we're still

investigating the factual background and the way the legal framework exists -- he may owe fiduciary duties to those third parties.

And for him to have an essential gag order because he can't share it with any other affiliate or third parties to which he has fiduciary duties that, hey, these allegations are being made, this may implicate your rights, you need to evaluate and take appropriate action on that entity's behalf, that, quite frankly, handcuffs him to a degree which is, we believe, impermissible, Your Honor.

THE COURT: You don't think a court order shields him from accusations of breach of fiduciary duty?

MR. TAYLOR: No, Your Honor, I don't. I think he has to protect very hard those fiduciary duties, and he must, if appropriate, ask Your Honor and point out that this puts him in an untenable position.

And to the extent that that court order is issued, we -- we obviously would have to get there later if that's where -- the way it were to come about. But I think he would have to consider appealing that, because that really does put him in an untenable position. I'm not trying to be overly argumentative or saying that, you know, we must have our way or we will appeal, but I truly do believe that that could put him in such a position that he would have no choice but to at least pursue that. Otherwise, open himself up to liability to

third parties.

THE COURT: Okay.

MR. TAYLOR: So, Your Honor, I think, with your questions -- I mean, I've got eight more pages of notes here. But I think our back-and-forth between you and I have pretty much established what our positions are. Unless Your Honor has any more questions for me at this point, I'm happy to yield the floor.

THE COURT: All right. Thank you, Mr. Taylor.

All right. Ms. George, I'll hear from you.

MS. GEORGE: Thank you, Your Honor. Can you hear me all right?

THE COURT: I can. Uh-huh.

MS. GEORGE: Great. Thank you, Your Honor.

You, in your back-and-forth with Mr. Taylor, you covered many of the points I was going to raise. I don't want to take the Court's time in repeating those.

I will just briefly cover the fact that we did offer Mr. Taylor to share the complaint with Mr. Dondero, as long as he kept it confidential and not share it with anyone else. That offer was not accepted. So we really think that belies the assertion in his papers that the reason he needs to see the sealed pleadings is to determine if his interests are implicated.

The TRO order, which, as Your Honor correctly pointed out,

is public, states that the Debtor is enjoined from making payments or transfers that were a part of the fraudulent transfers to Sentinal, an entity that Mr. Dondero has a majority ownership in. We would submit that that is more than enough information to determine if his interests are "implicated" and if he needs to move to intervene. We take no stance on whether intervention is correct, but we think that's more than enough.

And the fact that we offered to show him the allegations, as long as he kept it confidential, and that wouldn't work for him, really goes to our fears that Mr. Dondero is looking to find this complaint to further conspire with other parties and possibly hurt UBS further and move these assets further or dissipate them that are the subject of these fraudulent transfers.

Your Honor, Mr. Dondero's motion seeks to not only unseal the complaint but also the TRO motion and the exhibits underlying that motion. And as Your Honor is aware, those exhibits include documents that Mr. Dondero is not copied on, communications with former Debtor employees that Mr. Dondero is not copied on. And we have real concern with him gaining access to those and causing further issues pursuant to this fraud.

I'm happy, Your Honor, to go over the various procedural arguments. We don't think that the Federal Rules have

anything to do with due process rights of third parties. And Your Honor correctly pointed out that these are -- all of the rules go to parties, and Mr. Dondero is not a party. And we agree that, had -- if he did see the complaint, the seal -- the sealing order from this Court would protect any supposed fiduciary duty that he claims, although that seems pretty unavailing.

We have met all of the applicable rules here. And as Your Honor pointed out, even if Rule 26(b)(2) did apply, which we don't believe it does here, it's been more than 21 days. His arguments are moot. He's evaded service now for almost a month. There's -- and there's really no argument that an expedited timeline at this point isn't appropriate. His counsel, at the very least, has had these subpoenas for a full month.

So, asking that he produce documents within seven days and sit for a deposition within seven days we feel is more than adequate. And it's in line with the discovery that Your Honor allowed in the adversary proceeding between the Debtor and Mr. Dondero, which sought documents in five days over the Christmas holiday. And Mr. Dondero filed a very substantially similar motion there, and the Court denied it. And we believe that that should be done here as well.

We -- I'm happy to cover any questions that you would like, Your Honor, but we believe that the motion for

alternative service should be granted and that both of Mr. Dondero's motions should be denied.

THE COURT: All right. A couple of follow-ups. I think I used the expression, it seems like the cat is out of the bag to me because of the litigation hold letters and the TRO that is public information and just the title of the lawsuit.

So, I ask you, really, what is the big deal at this point? I mean, I feel like Mr. Dondero has to understand what this lawsuit is about, from what little bit has trickled out there, so what's the big deal? It sounds like to me you're just worried about the exhibits, the attachments to -- I can't remember if it was to the complaint or the motion for TRO and preliminary injunction. Is that -- am I hearing that correctly, it's really these documents more than anything else you feel are sensitive?

MS. GEORGE: Well, we feel it's all sensitive, Your Honor. That's why we were willing to share the complaint on a strictly confidential basis with Mr. Dondero. We feel very strongly that he should not have full access to the complaint without any confidentiality restrictions upon it, because our -- one of our major concerns is him seeing the complaint, seeing other individuals described therein, seeing the documents with the conversations that he's not copied on, and then going to those individuals and working to further, you

know, relieve assets and further hurt UBS's chances at recovering the billion-dollar judgment that's owed against these, you know, these Highland funds.

THE COURT: Okay. All right. So, again, just to make sure I'm hearing you loud and clear, if there was an order here where the Court required the unsealing of the -- or, you know, I don't know how we want to phrase it -- allowed Mr. Dondero to see everything, the pleading and the exhibits, as long as it restricted him from sharing it or discussing it with anyone other than his counsel, you all are willing to live with that? Am I hearing that correctly?

MS. GEORGE: I think -- very close. We would be willing to share the complaint with him, as long as he agreed not to share it, discuss it, or use it to develop strategy with any -- anyone else other than his attorneys. We would feel uncomfortable sharing the exhibits, --

THE COURT: Okay.

MS. GEORGE: -- as those are the documents that he is not on.

THE COURT: Okay. I misheard you on the exhibits. All right. Well, and I guess we don't need to say anything about the alternative service. Again, I've got your affidavit, your declarations of many, many process servers that I've seen here, and I think you've kind of said all you need to say on that one from your pleading.

All right. Well, before I return back to you, Mr. Taylor, Mr. Morris, you're a party in this, obviously, your client is. Do you have anything you want to say about these disputes?

MR. MORRIS: Your Honor, John Morris; Pachulski Stang Ziehl & Jones. Just very briefly.

As I understand the motion and I understand the argument today, the only thing we're talking about is a complaint and the exhibits attached to the complaint. We're not talking about the Debtor's response or the exhibits attached to the response. And if that's the case, Your Honor, we take no position on how the Court should rule on the treatment of the complaint and the exhibits annexed thereto, nor do we take a position on service or the deposition. We haven't joined in that.

THE COURT: Okay. I'm going to go back to Ms. George. Were there exhibits attached to the complaint, or just to the motion for a TRO and preliminary injunction? And the Debtor's --

MS. GEORGE: Just the motion, Your Honor. So, yeah, the complaint is a standalone document.

THE COURT: Okay. Okay. Okay, thank you.

MS. GEORGE: The exhibits were attached to the motion. Yes.

THE COURT: Okay. Okay.

MR. MORRIS: Okay. So, Your Honor, just to clarify,

then, that's fine, and the Debtor's position stands, as long as we're not talking about the Debtor's response and the exhibits attached to the Debtor's response. I don't think that's part of the motion. I don't think any request has been made of us in that regard.

THE COURT: All right. Mr. Taylor, I'll give you the last word, but I'll tell you where I'm leaning so you know exactly what perhaps you need to address. I'm leaning towards, I guess we would say, granting your motion for protective order in part, and that would work like this. That UBS would provide to you and Mr. Dondero the complaint, just the complaint, and the Court would order that the complaint not be shared beyond Mr. Dondero and his lawyers at Bonds Ellis absent further order of the Court.

I always like to say the obvious, that I have discretion to change that if ever someone urges and convinces me to change that, but that would be the ruling on that. And I would be inclined to rule that alternative service of the subpoena, by service on you and electronic service to Mr. Dondero, is appropriate, and say at this point that the document production would occur seven days after you see the complaint, and the deposition maybe a couple of days after that.

So, what -- knowing where I'm leaning, what say you, Mr. Taylor?

MR. TAYLOR: Your Honor, first of all, I'd like to point out that we offered to view the complaint and related items under the auspices of the protective order that is in place in the main bankruptcy case. We believe that is the appropriate standard by which it should be done, instead of just Bonds Ellis and his attorney. The protective order in place does allow him to discuss what he sees with affiliates and their -- and their agents. I'm sorry, their attorneys. I said agents. I apologize. And we believe that that is the appropriate thing.

I think what becomes really apparent here, Your Honor, is this is not only a strategic move to get free discovery from who the ultimate target is by two different parties, we need to be able to see the complaint to -- the complaint and the response. So, despite what Mr. Morris said, that that's not what we're asking for, it is. If I inartfully pled it, I apologize. But we need to see the full thing.

These are two parties acting in concert to ultimately drive the litigation goal that appears to be aimed against my client. These are not true plaintiff and defendant here. The fact that they enjoined themselves is -- is kind of laughable. It just is. And they have an agreement in total that they -- to settle everything, but yet they asked for an injunction of one party against the other. It's -- that's just silly.

And Your Honor, they're trying to also wall Mr. Dondero

off. I love our attorneys here at Bonds Ellis and I think we do a great job, but let's look at the manpower that they wanted to stack this up against. They want Pachulski Stang and Latham & Watkins v. little Bonds Ellis. And you know what, they can swamp us. And you know what, they're doing a damn good job of trying to do it.

And, but they're trying to wall Mr. Dondero off from being able to get the resources he needs to be able to defend himself and any affiliated entities. And they're trying to wall it off and they're -- it's a clever -- you -- sometimes you've just to call out a spade a spade, and that's what's happening here, in addition to the free discovery and ultimate litigation. They're trying to wall Mr. Dondero off. And it's not appropriate, Your Honor, and we need your help to prevent -- prevent that from happening. They're trying to stack the deck.

And as far as seven days after, with all due respect, I've -- I've got trial that is continuing and has been for the past month in Judge Hale's court, and we've got three -- two, maybe three more days left of trial in that. I've got a couple other matters down in Judge Isgur's court that are equally large and actually, as far as terms of dollars, much larger even that this case. And there's only so much bandwidth I have to be able to deal with this, Your Honor.

Also, our lead -- as Your Honor is aware, our lead person

on this case is not here anymore, and I'm not leaning on that as an excuse, but there is some ramp-up that we are experiencing, trying to overcome that. And so it's just -- it's too fast.

Normally, after you got served with a complaint, you would at least have 21 days before they could even serve you with discovery, and then you should have 30 days to be able to answer it. That's the standard response date that is laid out in the Rules. So, in my opinion, it should be 51 days after we get to view the response.

And I see Mr. Seery is laughing, but, you know, it's -- those are what the Rules are. And if they wanted to bring litigation against Mr. Dondero, then bring it. Don't hide behind this third -- this two friendly-party litigation.

And I'm sorry my voice is getting raised, but it just -- it raises my ire a little bit. I know other parties are probably -- equally have as much ire against my client. And so I will try to refrain from doing that in the future. That's all, Your Honor.

MR. MORRIS: Your Honor, may I be heard? It's John Morris with Pachulski.

THE COURT: Do you have something to clarify, or what?

MR. MORRIS: I do, actually. You know, notwithstanding my respect for Mr. Taylor, I do take offense

to the use of the words "laughable" and "silly." The fact of the matter is the Debtor is a defendant in a lawsuit. We have not joined in seeking discovery against Mr. Dondero. Indeed, we are the recipient of very voluminous discovery demands pursuant to the subpoena that was served on the Debtor itself. We've taken no position as to whether or not the complaint should be disclosed. We've taken no position as to whether or not alternative service should be granted. The notion that this is a friendly -- a so-called friendly litigation, Mr. Taylor is simply mistaken.

And I would ask, Your Honor, can we make sure that Mr. Dondero is on this call, pursuant to the court order? I don't see his video here.

THE COURT: All right. What about that, Mr. Taylor?

MR. TAYLOR: So, one, I did send him a link, and I don't know if he is attending or not.

Two, I don't believe -- and this is where this gets -- it points out the problems we have with not following the procedural rules. From what I understand of the order requiring him to be present for all bankruptcy proceedings, and this is -- this is an adversary proceeding, to which he is not a party, because he has not been sued, and that order simply doesn't require him to be here.

Now, he may be here or not, because it was important to him, but I don't know what his schedule was, so I didn't

confirm for sure whether he was going to be on. And so I'd quite simply say I sent him a link but I didn't instruct him that he absolutely had to be here because I did not believe, under the Court's order, that he had to be. And certainly, as a nonparty, I don't think he is. And that's all I can tell the Court on that issue.

THE COURT: All right. Well, let me ask. Mr. Dondero, if you're out there, please speak up so we know.

(Pause.)

THE COURT: Just so you know, I have a screen here in my courtroom they call the Polycom. I can't see every single -- I can just see that there are 49, 50, 51, 52, 53 -- 55 or 56 participants. But I can only see people who have recently spoken or are speaking. I can't see every person who's involved.

Mike, do you happen to see if --

THE CLERK: I don't see him on there.

THE COURT: Yes. We don't see Mr. Dondero. All right. So, gosh.

MS. GEORGE: Your Honor, may I respond briefly?

THE COURT: Okay. Go ahead. Go ahead.

MS. GEORGE: Thank you, Your Honor. You know, Mr. Taylor made some -- some outrageous accusations there. This is not a collusive suit by any stretch of the imagination. We are seeking a temporary restraining order against the Debtor.

They are on the other side. And the rules that Mr. Taylor continues to cite are with regard to parties. They do not apply in injunctive -- in emergency injunctive relief on third parties.

I -- you know, Mr. Taylor mentioned he's very busy. I'm sure everyone on this call is very busy. I know for a fact that Your Honor is incredibly busy. I receive the docket updates every day. And so I think he's making a lot of excuses, and he has had -- and the short timeline is, you know, of his own making. They have been evading service for 30 days now. There is no question that they have had more than enough time to prepare for a deposition, to collect the documents responsive to the subpoenas. So any short timeline that's going to be an issue for him is because of his client avoiding service.

THE COURT: Okay.

MS. GEORGE: Thank you, Your Honor.

THE COURT: Thank you.

Well, let me say several things here. I don't have memorized the exact way I worded my instruction many weeks ago regarding Mr. Dondero attending all of these court hearings. I can't remember. I know what I intended to do, and I'm surprised if I didn't get it worded in an order this way. What I intended to do was at least say this: At any hearing where he takes a position, where he files a pleading or wants

to take a position, he needs to be here. That's what I thought I said. And I didn't mean just in the underlying bankruptcy case or in certain adversaries. I meant if he wants the Court to devote time to him and his positions, I don't want it to be just the lawyers. I want him to be here, available. Available to the Court, available to any party who might want to examine him with regard to the positions he takes. And I want him to see what's happening.

I had many motivations, but of course a strong motivation for ordering that was when, at a hearing shortly after the TRO, the December 10th TRO, he, in deposition testimony and then at the preliminary injunction hearing testimony, he gave the impression that he hadn't ever read the TRO. Or hadn't visited about -- hadn't attended the hearing on the TRO, hadn't read it, didn't really -- you know, acted like he wasn't completely aware of its details. So I wanted to make sure that never happened again. If there was an order somehow affecting him, I wanted to be sure he was here when it all happened. But I also think, again, if he's taking positions, he needs to be here and be a part of it all. Okay? So, --

MR. MORRIS: Your Honor, if I may, because I can just read you the order right now.

THE COURT: Oh, good.

MR. MORRIS: Because it's clear as day, just as Your Honor recalled it.

It's at Docket No. 59 in the adversary proceeding concerning the injunctive relief. The preliminary injunction was entered on January 12, 2021. And Paragraph 6 provides, "James Dondero is ordered to attend all future hearings in this Bankruptcy Court by WebEx or whatever other video platform is utilized by the Court unless otherwise ordered by the Court."

THE COURT: Okay.

MR. MORRIS: There's no exceptions. It's --

THE COURT: All right.

MR. MORRIS: And I would -- yeah. I'll just leave it at that.

THE COURT: It's even a little broader than I remembered. It didn't narrow in on if he's taking a position. So that, you know, he's violated a court order today. But, anyway, I'm sure you will communicate to him that he needs to participate in the future. Okay? And I guess I'm going to have to play teacher and call roll and make sure he's out there right at the beginning of every hearing.

MR. TAYLOR: Your Honor, I'll make sure of that. And to the extent, if that was my fault, of course, I wasn't involved with this case when -- when Your Honor made those rulings.

THE COURT: Okay.

MR. TAYLOR: As you know, I only recently came into

this case, just merely it was supposed to be just for purposes of confirmation.

THE COURT: Okay.

MR. TAYLOR: And the circumstances have --

THE COURT: Well, if --

MR. TAYLOR: -- developed.

THE COURT: If it sets your mind at ease, I'm not going to an issue a show cause order this afternoon to hold him in contempt of court for not being on today's WebEx. I've already got enough contempt motions in front of me in this case, and I don't want to add to it with this. Okay?

But let me get to the matters before me. You know, I -- the word "silly" was used at some point by someone, and, you know, I always cringe a little. I was tempted to come out here and say, this is silly. You know, he's dodging service. And by the way, the cat's out of the bag. Surely he knows what this lawsuit is about. I was tempted to use that word myself. But I wanted to make sure Mr. Dondero knows and everyone knows, I mean, this is serious stuff. I read the complaint, obviously. I've read the motion for the TRO and attachments. It's serious stuff. And you know, have no doubt about that.

But it is a complaint of UBS against Highland. Mr. Dondero is not a defendant. None of the various entities that we've talked about in so many hearings, in so many contexts,

under the Highland umbrella, none of them are defendants in this lawsuit. There may be other lawsuits that mushroom and involve some of them regarding some of what is alleged in the complaint. But at this point, it's UBS against Debtor.

And yes, I understand describing it as friendly litigation when, right at the beginning, Highland agrees to a TRO. But gosh, isn't this case full of irony, among other things? You know, I don't know that I've ever seen two parties fight each other as hard as Highland and UBS as we've seen in this case. And they went to mediation. No go. Didn't settle. We had a long estimation hearing. We've had appeals. You know, it's -- I find it a little of a stretch to think of this as friendly litigation. It's cooperation at this point, is what I would call it, and we'll see what happens. But, again, I just stress for the record that Mr. Dondero is not a party, nor is any other entity in the Highland umbrella, other than the Debtor Highland itself.

Now, having said that, I do not take sealing lightly at all. I'm trying to think -- well, it's not very often that I've been asked to seal an adversary proceeding. It happens, but I don't take it lightly, because I am, like I think any judge, sensitive to transparency, to Bankruptcy Code Section 107, and allowing all parties in interest in a bankruptcy case to know what's going on. But there are times when there is sensitive commercial information, potentially scandalous,

defamatory matter. You know the examples in 107 and the case law. There are situations where at least temporary sealing is warranted. And I decided, after spending a half a day at my desk looking through this one, that it was appropriate, at least for now.

And I don't even think, the way UBS worded it -- well, I know they worded it in an open way, where, you know, for now. I'm thinking you said until a hearing on the preliminary injunction, maybe. Am I right, Mr. Clubok or Ms. George?

MS. GEORGE: That's correct, Your Honor.

THE COURT: Yes.

MS. GEORGE: Your Honor, that's correct. It's just sealing until the preliminary injunction hearing.

THE COURT: Yes. So, you know, that's a big deal, right? That's a big factor, that we're talking about a finite period of time. And, again, I spent a half a day at my desk looking at this, and was convinced there are valid concerns in keeping this sealed for a finite period of time.

So, what I'm going to do is grant in part Mr. Dondero's motion, and I'm going to do it the way I suggested earlier. He shall be allowed to see the complaint. Okay? He can see the complaint. And at this point, it can only be shared with him and Bonds Ellis. Okay? So that's the ruling for now. Okay? We're talking about a finite period of time. So I'm not persuaded that his fiduciary duties make this intolerable

or he needs more lawyers than Bonds Ellis. I mean, this is the ruling for now. I think it strikes a fair balance.

So he gets to see the complaint and Bonds Ellis gets to see the complaint, but protective order is in place so that they are restricted from sharing or discussing the contents with anyone else.

So, my further ruling is that the alternative service of the subpoenas on Mr. Dondero is approved. Again, mailing to Mr. -- regular mail to Mr. Dondero is fine, and email to Mr. Taylor is fine.

And I can't remember, I mean, it's not an onerous list of documents sought, right? I've got to pull this up again. It was how many categories of documents?

MR. TAYLOR: Sorry, I'm turning there right now, Your Honor.

(Pause.)

THE COURT: It didn't occur to me that more than seven days was needed.

MS. GEORGE: It's twelve categories of documents, Your Honor.

THE COURT: Okay. Show me again the docket number or tell me the docket number that it appears at.

MS. GEORGE: Certainly. It's Docket 23.

THE COURT: Okay. There it is.

MS. GEORGE: And it's Page -- yeah, Page 27 of that

PDF.

THE COURT: Okay. Page 27.

MS. GEORGE: And as Your Honor will see, they're fairly limited categories of documents.

THE COURT: Okay. Well, I just wanted to double-check. Okay. (Pause.) Okay. Seven days from, again, the time the complaint is received. I assume you're going to send the complaint today. I don't know, maybe you want to have the order in place before you do that, so maybe tomorrow. So let's just get a date certain. Okay? So, the documents shall be produced -- what is seven days from tomorrow? What is that?

MR. TAYLOR: May 6th, Your Honor.

THE COURT: May 6th. And so can we say a deposition the following Monday? I'm going to be the secretary/scheduler here just while you're all on the line, so we don't waste a bunch of time offline. That'll be 10th, May 10th. Everybody good with May 10th for -- of course, Mr. Dondero is not here, so we don't -- does anyone know why May 10th doesn't work?

MS. GEORGE: May 10th works for UBS, Your Honor.

THE COURT: Okay. May 10th unless you all otherwise agree. If you all mutually agree to something different, fine. But if you can't, May 10th at 9:30 in the morning. How does that sound?

All right. Well, --

MR. TAYLOR: Your Honor, I --

THE COURT: Uh-huh?

MR. TAYLOR: Your Honor, I would note for you, I believe that you have docket call on the injunction suit against Highland Capital v. Dondero on May 10th.

THE COURT: Okay.

MR. MORRIS: That is true.

THE COURT: Okay. Just the trial docket call?

MR. MORRIS: Correct.

THE COURT: Okay.

MR. MORRIS: I actually think the scheduling order may say the week of, but I'm not certain, Your Honor.

MR. TAYLOR: I don't know. I'm just showing it on my docket calendar as 1:30.

THE COURT: Okay.

MR. TAYLOR: I'm not --

MR. MORRIS: It may --

THE COURT: So that's probably the regular -- that should be our regular trial docket call, which is just a time where we all show up and say, are you all trial-ready? Okay. If so, we're going to set it, you know, the following week of May 17th. So it seems like you can do both, right? You can take a break from the deposition, if you're still going at 1:30, and dial into the WebEx and we'll see if you all are going to be trial-ready. Because it wouldn't be a trial.

It's just our trial docket call to hear if everyone is trial-ready. All right? So, I think we can do that.

MS. GEORGE: We will absolutely take a break, Your Honor, if that's scheduled for that day.

THE COURT: Okay. All right. Ms. George, can I depend on you to upload forms of order that reflect the Court's ruling?

MS. GEORGE: Yes. We'd be more than happy to. Thank you, Your Honor.

THE COURT: All right. Thank you. We stand adjourned.

THE CLERK: All rise.

(Proceedings concluded at 2:39 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling **04/29/2021**

_____ _____

Kathy Rehling, CETD-444 Date

Certified Electronic Court Transcriber

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